Per R. Subhash Reddy, J

Feeling aggrieved by order dated 29.11.2005 passed by the learned Single Judge in Writ Petition No.24348 of 2005, the appellant has filed this appeal.

The respondent-writ petitioner was appointed as food grains transport contractor for the year 2005-2006 in Kurnool District. He entered into an agreement with the Civil Supplies Corporation on 25th of July, 2005 and commenced the work. On 5th of August, 2005, when the appellant was transporting 255 quintals of rice in the truck bearing No.AP-21 W-3105 from State Warehousing Corporation, Kurnool to a Mandal Level Stockist Point, Sirvel, the truck was seized on the ground that the stock meant for Public Distribution System was being illegally diverted to Hyderabad. Pursuant to the seizure, a case was registered being Crime No.106 of 2005 on the file of P.S. Kurnool. In compliance of order dated 23.9.2005 passed by this Court in Criminal Petition No.4725 of 2005 for release of the stock, the seized stock of rice was released in favour of the respondent who made over the same to the concerned authorities. Subsequently, the respondent was discharged in Crime No.106 of 2005.

At the stage of settlement of claim of the respondent, the Corporation withheld a sum of Rs.4,57,935/- representing cost of the rice which is said to have been diverted for being illegally sold at Hyderabad. The respondent applied to the Corporation for release of the amount by asserting that the diversion in the route of the truck was without his knowledge and when the truck was missing with the load of commodity, he himself made a complaint to the police and subsequently delivered the stock at Mandal Level Stockist Point, Sirvel. He further pleaded that there was no loss to the appellants on account of the said incident, and, in that view of the matter, no amount can be withheld from the bills payable to him. However, his claim was rejected vide order dated 10.11.2005, passed in proceedings No.PDS.2/Movt/FG.5(13)/11387/2005-06, stating that it was not possible to refund the said amount of Rs.4,57,935.50 as it was withheld in terms of the agreement entered into. It is pertinent to mention that the said representation was rejected by the Vice Chairman and Managing Director of the Andhra Pradesh State Civil

Supplies Corporation Limited. The said rejection order was challenged before the learned Single Judge mainly on the ground that in absence of any loss or damage caused to Corporation on account of seizure of the truck with load of commodity, which was ultimately returned to the Department, Corporation cannot withhold any amount from the bills payable to the respondent-writ petitioner.

The appellants herein filed counter affidavit in the writ petition, opposing the relief claimed by the respondent. It was averred that the amount was deducted in accordance with the terms of contract because the respondent had violated the condition of contract.

The learned Single Judge allowed the writ petition by observing that there was no legal basis for withholding part of the amount payable to the writ petitioner (respondent herein).

Shri D. Linga Rao, learned counsel for the appellant argued that the direction given by the learned Single Judge for payment of Rs.4,57,935/- to the respondent is vitiated by an error of law and, therefore, the impugned order is liable to be set aside. Learned counsel emphasized that the amount was deducted from the bills of the respondent because he was found guilty of having acted in violation of the conditions of contract. Learned counsel then argued that the writ petition filed by the respondent should not have been entertained because he has got an effective alternative remedy of arbitration. In support of his argument, learned counsel placed reliance on the judgment of the Supreme Court in the case of *Orissa Agro Industries Corporation Limited vs. Bharati Industries.*

On the other hand, Shri P. Raghavendra Reddy, learned counsel for the respondent argued that the premise on which the appellants withheld the amount payable to his client was legally untenable because, as a matter of fact, no loss was caused to the Corporation on account of the so-called diversion of the truck. Shri Reddy pointed out that the respondent had himself made a complaint to the police regarding missing of truck and when the truck was traced out and seized, the respondent delivered the rice to the concerned party after obtaining release order from the High Court. Learned counsel read out the conditions of contract to show that the Corporation can recover amount only in the event of any loss having been caused due to the act of the contractor and not otherwise. He then submitted that the remedy of arbitration cannot be treated as an effective remedy because the representation

made by the respondent was rejected by none else than the Vice Chairman and Managing Director of the Corporation who could be designated as arbitrator.

We have considered the submissions of the learned counsel. For deciding all important questions arising in the appeal, it will be useful to notice Clause 11 and Clauses 23(i) and (ii) of agreement dated 25.7.2005 entered between the parties. The same read as under:

> "11. **Loss sustained by Corporation**:
>
> The contractor shall indemnity the Corporation for any loss or damage sustained by it due to the improper performance of the work done by the contractor under this agreement. Such loss sustained by the Corporation may be recovered from the bills payable to the Contractor, from the Security Deposit and Bank Guarantee furnished by the Contractor, under this agreement or under any other agreement of the Contractor with the Corporation. Should the above sums be not sufficient to cover the full amount recoverable, the contractor shall pay the Corporation on demand the balance amount due. Otherwise, the Corporation is at liberty to recover the amount due under R.R. Act.
>
> 23. **Arbitration:**
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> i. The contractor shall prefer a demand, if any, in writing to the VC & Managing Director for arbitration in respect of any claim under this agreement within three months from the date of termination or completion of the agreement, failing which the demand shall be deemed to have been waived absolutely time barred and the Corporation shall be discharged and released of all liabilities under this agreement in respect of such demand.
>
> ii. On receipt of a demand from the contractor within the prescribed time, disputes and differences arising out of, or, in any way touching or concerning this agreement, except such matters, the decision of which is expressly provided for in the

agreement, shall be referred to the Arbitration as per Arbitration and Conciliation Act, 1996."

A bare reading of Clause 11 re-produced above shows that it obligates the contractor to indemnify the corporation for any loss or damage sustained by it due to improper performance of the work done by the contractor. The Corporation can recover the amount from the bills payable to the contractor.

The facts of this case show that the Corporation did not suffer any loss on account of the so-called diversion of the stock of rice. This was not controverted by the appellants. Not only this, learned counsel for the appellants fairly stated that the stock which was alleged to have been diverted was ultimately handed over to the Corporation. It is thus clear that the Corporation had not suffered any loss or damage due to improper performance of the work on the part of the contractor. As a corollary, it must be held that the respondent was not obliged to indemnify the Corporation for the so-called loss and the latter was not entitled to recover the amount from the bills of respondent.

The argument of the learned counsel for the appellant that the learned Single Judge should have relegated the respondent to the remedy of arbitration in terms of Clause 23 of the agreement merits rejection, because it is an undisputed position that the representation made by the appellant was rejected by the Vice Chairman and Managing Director of Corporation vide his order dated 20.7.2005. Once the arbitrator himself had taken a decision in the matter, no useful purpose would be served by relegating the respondent to the remedy of arbitration.

For the foregoing reasons, we do not find any valid ground to interfere with the order of the learned Single Judge. Writ Appeal is accordingly dismissed. No order as to costs.

R. SUBHASH REDDY, J

23rd December, 2005

G.S. SINGHVI, CJ

Ajr/msnr/vtv